

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Tri-County Telephone Association, Inc.,	)	WC Docket No. 08-239
Petition for Waiver of Accounting Rules	)	

**ORDER**

**Adopted: August 22, 2017****Released: August 22, 2017**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this Order, the Wireline Competition Bureau (Bureau) grants a petition filed by Tri-County Telephone Association, Inc. (TCT) seeking a waiver “of the requirement adopted in the 1980s’ *Cost Separation* proceeding that ‘investments once allocated to nonregulated use may not be reallocated to regulated use,’ consistent with the waiver process contemplated at that time.”<sup>1</sup> By granting this waiver, we allow TCT to return its loop investment to regulated costs, which will bring TCT into compliance with the Commission’s cost separations requirements and will further the Commission’s objective of supporting broadband-capable networks in areas served by rate-of-return carriers.

**II. BACKGROUND**

2. *Joint Cost Orders*. Under the Commission’s rules, incumbent local exchange carriers (incumbent LECs) that are regulated pursuant to rate-of-return methodology are required to keep accounts pursuant to Part 32, which governs the Uniform System of Accounts for Telecommunications Companies. Section 32.14 requires carriers to keep regulated accounts, which “include the investments, revenues and expenses associated with those telecommunications products and services to which the tariff filing requirements . . . are applied.”<sup>2</sup> Section 32.23 governs the accounting treatment of activities treated as nonregulated, which include activities that have either been deregulated, or were never regulated.<sup>3</sup>

3. In the late 1980s, the Commission released a series of orders that set forth various processes to separate the costs of regulated and nonregulated accounts, to protect ratepayers from paying inflated rates for regulated services in order to subsidize nonregulated services.<sup>4</sup> One of the requirements the Commission established in the *Joint Cost Orders* is that “investments once allocated to nonregulated use must not be allocated to regulated use.”<sup>5</sup> This requirement is referred to as the Cost Separation Rule

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<sup>1</sup> Petition of Tri-County Telephone, Inc. for Waiver of Accounting Rules, at 1 (filed Oct. 22, 2008) (Petition) (citing *Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, et al.* Order on Further Reconsideration, 3 FCC Rcd 6701, 6705, para. 29 (1988) (*Joint Cost Further Reconsideration Order*)).

<sup>2</sup> 47 CFR § 32.14.

<sup>3</sup> *Id.* § 32.23.

<sup>4</sup> See *Joint Cost Further Reconsideration Order*, , 3 FCC Rcd at 6701; Order on Reconsideration, 2 FCC Rcd 6283 (1987) (*Joint Cost Reconsideration Order*); Report and Order, 2 FCC Rcd 1298 (1987) (*Joint Cost Order*). Hereinafter, these orders will collectively be referred to as the “*Joint Cost Orders*.”

<sup>5</sup> See *Joint Cost Further Reconsideration Order*, 3 FCC Rcd at 6705, para. 29.

and is intended to ensure that “investment risks of nonregulated ventures are not shifted to a carrier’s regulated operations.”<sup>6</sup>

4. In the 2005 *Wireline Broadband Order*, the Commission established a new regulatory framework for broadband Internet access services offered by wireline facilities-based providers.<sup>7</sup> In that Order, the Commission allowed rate-of-return incumbent LECs to continue offering the transmission underlying wireline broadband Internet access services on a common-carrier basis, subject to permissive detariffing. The Commission noted that all rate-of-return carriers that participated in the proceeding stated that they intended to continue offering broadband transmission as a Title II common carrier service.<sup>8</sup> The Commission further noted that its historic treatment of wireline broadband Internet access transmission service had been as a “regulated, interstate special access service,” and concluded that incumbent LECs should continue to treat the provision of broadband Internet access transmission services as a regulated activity for accounting purposes even when choosing to offer the service on a non-common carrier basis.<sup>9</sup> The Commission reasoned that the costs of changing the federal accounting treatment would outweigh any potential benefits.<sup>10</sup> The Commission further explained that if the costs associated with the broadband Internet access transmission service were treated as nonregulated, such costs would no longer be apportioned under the Part 36 jurisdictional separations rules.<sup>11</sup> Thus, whether an incumbent LEC chose to offer such broadband transmission on a common carriage basis or not, its cost allocation treatment should have been as a “regulated” service.<sup>12</sup>

5. Last year, in the *Rate-of-Return Reform Order*, the Commission adopted significant reforms to the rules governing the provision of universal service support to rate-of-return incumbent LECs and provided support for situations where the customer no longer subscribes to traditional regulated local exchange voice service, and instead subscribes to stand-alone broadband.<sup>13</sup> To implement these reforms, the Commission, among other things, revised certain cost allocation and tariffing rules for carriers to introduce supported Consumer Broadband-only Loop services.<sup>14</sup> Specifically, the Commission revised Part 69 of the Commission’s rules to require rate-of-return carriers to move the costs of Consumer Broadband-only Loop services from the Special Access category to the new Consumer Broadband-Only Loop category.<sup>15</sup>

6. *TCT’s Petition*. TCT is a small, rural, rate-of-return incumbent LEC operated from Basin, Wyoming. TCT participates in the National Exchange Carrier Association (NECA) common line pool and, as a result, implements its cost allocation decisions for its common line costs through NECA. In 2001, TCT obtained NECA’s approval to allocate certain digital subscriber line (DSL)-related loop

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<sup>6</sup> *Id.*

<sup>7</sup> *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities et al.*, CC Docket No. 02-33 et al., Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005) (*Wireline Broadband Order*).

<sup>8</sup> *Id.* at 14927, para. 138.

<sup>9</sup> *Id.* at 14924-25, paras. 130-31.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> We note that nothing in the subsequent *Rate-of-Return Order* reforms modified this cost allocation requirement. *Connect America Fund et al.*, Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016) (*Rate-of-Return Reform Order*).

<sup>13</sup> *Id.* at 3089, para. 1.

<sup>14</sup> *See id.* at 3157-62, paras. 188-204.

<sup>15</sup> *Id.* at 3158-59, para. 191.

investments, used to provide nonregulated broadband Internet access services, to nonregulated accounts.<sup>16</sup> According to TCT, in 2001, it mistakenly also moved the transmission component of this retail broadband service to nonregulated accounts, and began offering DSL transmission on a nonregulated, private carriage basis.<sup>17</sup> In 2010, TCT began offering DSL transmission on a regulated, detariffed basis and began paying Universal Service Fund (USF) assessments; however, the loop investments have remained allocated to nonregulated accounts.<sup>18</sup> In order to become compliant with the Commission's rules, pursuant to the *Wireline Broadband Order*, TCT argues that it must reallocate certain of its loop investments used to provide Internet access services from nonregulated accounts to regulated accounts.<sup>19</sup> Because the *Joint Cost Orders* prohibit a carrier from reallocating investments to regulated use once allocated to nonregulated use, TCT filed a petition seeking a waiver of that prohibition.<sup>20</sup>

### III. DISCUSSION

7. The Commission may waive its regulations for good cause shown.<sup>21</sup> In general, the waiver request must demonstrate special circumstances warranting deviation from the general rule, and that such a deviation will serve the public interest.<sup>22</sup> With respect to the Cost Separation Rule, the Commission has explained that it will waive this requirement when a carrier makes “a convincing showing that (1) the carrier’s regulated activities require the use of plant capacity allocated to nonregulated activities, and (2) that the carrier cannot obtain the needed capacity elsewhere at lower cost.”<sup>23</sup> In this case, we conclude that TCT has met both the general waiver standard and the more specific Cost Separation Rule waiver standard.

8. First, we conclude that good cause exists to grant TCT’s request for a waiver to transfer prospectively its nonregulated DSL-related loop investment to regulated accounts so that TCT may offer broadband transmission service pursuant to the accounting treatment required by the *Wireline Broadband Order*.<sup>24</sup> As TCT argues, without a waiver allowing it to move the DSL-related loop investment to regulated accounts, it is not in compliance with the Commission’s requirement that these costs be treated as regulated for accounting purposes.<sup>25</sup> Additionally, we agree with TCT that its 2001 allocation decision, “reflecting its intent to offer DSL on a non-common carrier basis, and NECA’s approval of it,” has made

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<sup>16</sup> As a result of this allocation decision, TCT asserts that it has foregone “considerable high-cost support.” Petition at 4. TCT explains that loop investment was excluded from the regulated accounts that are used to compute revenue requirements and rural carrier high-cost universal service support. *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Letter from Gregory J. Vogt, Counsel for Tri-County Telephone Association, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 08-239, at 2 (filed Sept. 28, 2016) (TCT Sept. 28, 2016 *Ex Parte*).

<sup>19</sup> Petition at 1.

<sup>20</sup> *Id.* at 3-4. The Bureau sought comment on the TCT Petition and no comments were filed. *See Pleading Cycle Established for Tri-County Association, Inc. Petition for Waiver of Accounting Rules*, Public Notice, 23 FCC Rcd 17414 (WCB 2008).

<sup>21</sup> 47 CFR § 1.3.

<sup>22</sup> *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

<sup>23</sup> *Joint Cost Further Reconsideration Order*, 3 FCC Rcd at 6705, para. 31 (citing *Joint Cost Order*, 2 FCC Rcd at 1320 n. 284).

<sup>24</sup> TCT also sought a *nunc pro tunc* waiver of the Commission’s *Computer II Final Decision* requirement in its Petition, but has since withdrawn its request for waiver of this requirement. *See* Letter from Gregory J. Vogt, Counsel for Tri-County Telephone Association, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 08-239, at 4 n. 11 (filed Dec. 18, 2015) (TCT Dec. 18, 2015 *Ex Parte*).

<sup>25</sup> Petition at 5.

TCT the only carrier needing this type of relief, thus presenting the type of special circumstances warranting grant of a waiver.<sup>26</sup> Moreover, as TCT describes in its petition and subsequent filings, not allowing TCT to reallocate investments so that it can treat this loop investment as regulated would be inconsistent with the Commission's policy objective of promoting deployment of broadband service in areas served by rate-of-return carriers.<sup>27</sup> For example, TCT is not currently receiving full USF support for the services it offers, and also has been unable to take advantage of the new broadband USF support mechanism pursuant to the *Rate-of-Return Reform Order*, or to accurately provide NECA with projections for its revenue requirements.<sup>28</sup> We agree with TCT that these outcomes harm the public interest by preventing TCT from obtaining all available resources to deploy broadband services to its customers. Finally, we are aware of no countervailing factors under which the public interest would be served by denying the requested waiver.<sup>29</sup>

9. Second, we conclude that TCT has made a convincing showing that these circumstances also satisfy the Cost Separation Rule waiver standard. TCT began offering DSL transmission on a regulated basis in 2010, and needs to use this plant capacity to provide these services. There is no alternative plant that can provide the DSL transmission.<sup>30</sup> In addition, since this loop plant is already in place and has been depreciated for a number of years, TCT would not be able to obtain additional loop plant at a lower cost.<sup>31</sup>

#### IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to sections 201-205 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201-205, section 1.3 of the Commission's rules, 47 CFR § 1.3, and the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91 and 0.291, Tri-County Telephone Company's petition for waiver of the *Cost Separation Rule* IS GRANTED.

11. IT IS FURTHER ORDERED that pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief  
Wireline Competition Bureau

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<sup>26</sup> *Id.* at 6.

<sup>27</sup> *Id.* at 5; TCT Sept. 28, 2016 *Ex Parte*, at 2-3.

<sup>28</sup> TCT Sept. 28, 2016 *Ex Parte*, at 1-2.

<sup>29</sup> *Id.*

<sup>30</sup> Petition at 6.

<sup>31</sup> TCT Dec. 18, 2015 *Ex Parte*, at 3.